

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

WESTERN DIVISION

ESTATE OF JOSE R. FELICIANO, )  
By and through Jose L. Feliciano and )  
Migdalia Rosado, as Administrators of )  
The Estate of Jose R. Feliciano, )  
Plaintiffs )

vs. )

KEVIN A. MILES, )  
LEROY HOLDING COMPANY, INC., )  
and SLC TRANSPORTS, INC., )  
Defendants )

Civil No. 03-30308-MAP

U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
MAR 25 AM 10:41

CLERK'S OFFICE

**ANSWER OF DEFENDANTS AND DEMAND FOR TRIAL**

**JURISDICTION**

1. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 1 of the Plaintiff's Complaint.

**PARTIES**

2. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 2 of the Plaintiff's Complaint.
3. The Defendants admit the allegations contained in Paragraph 3 of the Plaintiff's Complaint.
4. The Defendants admit the allegations contained in Paragraph 4 of the Plaintiff's Complaint.
5. The Defendants admit the allegations contained in Paragraph 5 of the Plaintiff's Complaint.

**FACTS**

6. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 6 of the Plaintiff's Complaint.
7. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 7 of the Plaintiff's Complaint.

8. The Defendants admit the allegations contained in Paragraph 8 of the Plaintiff's Complaint.
9. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 9 of the Plaintiff's Complaint.
10. The Defendants deny the allegations contained in Paragraph 10 of the Plaintiff's Complaint.
11. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 11 of the Plaintiff's Complaint.
12. The Defendants deny the allegations contained in Paragraph 12 of the Plaintiff's Complaint.
13. The Defendants deny the allegations contained in Paragraph 13 of the Plaintiff's Complaint.

**COUNT ONE**

**Estate of Joseph R. Feliciano vs. Kevin Miles**  
**M.G.L. c. 229, §2 - Wrongful Death Caused by Negligence**

14. The Defendants repeat, reallege and incorporate herein by reference their answers contained in Paragraphs 1 through 13.
15. No response is necessary to Paragraph 15 of Plaintiff's Complaint as no allegation is contained therein.
16. The Defendants admit the allegations contained in Paragraph 16 of the Plaintiff's Complaint.
17. The Defendants deny the allegations contained in Paragraph 17 of the Plaintiff's Complaint.
18. The Defendants deny the allegations contained in Paragraph 18 of the Plaintiff's Complaint.

**COUNT TWO**

**Estate of Joseph R. Feliciano vs. Kevin Miles**  
**M.G.L. c. 229, §6 - Wrongful Death - Conscious Suffering**

19. The Defendants repeat, reallege and incorporate herein by reference their answers contained in Paragraphs 1 through 18.
20. No response is necessary to Paragraph 20 of Plaintiff's Complaint as no allegation is contained therein.
21. The Defendants admit the allegations contained in Paragraphs 21 of the Plaintiff's Complaint.

22. The Defendants deny the allegations contained in Paragraph 22 of the Plaintiff's Complaint.
23. The Defendants deny the allegations contained in Paragraph 23 of the Plaintiff's Complaint.

**COUNT THREE**

**Estate of Joseph R. Feliciano vs. Kevin Miles**  
**M.G.L. c. 229, §2(2) and §(5)(3) - Wrongful Death - Punitive Damages**

24. The Defendants repeat, reallege and incorporate herein by reference their answers contained in Paragraphs 1 through 23.
25. No response is necessary to Paragraph 25 of Plaintiff's Complaint as no allegation is contained therein.
26. The Defendants deny the allegations contained in Paragraph 26 of the Plaintiff's Complaint.

**COUNT FOUR**

**Estate of Joseph R. Feliciano vs. SLC Transport, Inc.**  
**Liability Pursuant to M.G.L. c. 229, §2; M.G.L. c. 231, §85A; and Respondeat Superior**

27. The Defendants repeat, reallege and incorporate herein by reference their answers contained in Paragraph 1 through 26.
28. No response is necessary to Paragraph 28 of Plaintiff's Complaint as no allegation is contained therein.
29. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 29 of the Plaintiff's Complaint.
30. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 30 of the Plaintiff's Complaint.
31. The Defendants deny the allegations contained in Paragraph 31 of the Plaintiff's Complaint.
32. The Defendants admit the allegations contained in Paragraph 32 of the Plaintiff's Complaint.
33. The Defendants deny the allegations contained in Paragraph 33 of the Plaintiff's Complaint.

**COUNT FIVE**

**Estate of Joseph R. Feliciano vs. SLC Transport, Inc.**  
**Liability For Conscious Suffering Pursuant to M.G.L. c. 229, §2 §6; M.G.L. c. 231, §85A;**  
**and Respondeat Superior**

34. The Defendants repeat, reallege and incorporate herein by reference their answers contained in Paragraph 1 through 34.
35. No response is necessary to Paragraph 35 of Plaintiff's Complaint as no allegation is contained therein.
36. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 36 of the Plaintiff's Complaint.
37. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 37 of the Plaintiff's Complaint.
38. The Defendants deny the allegations contained in Paragraph 38 of the Plaintiff's Complaint.
39. The Defendants admit the allegations contained in Paragraph 39 of the Plaintiff's Complaint.
40. The Defendants deny the allegations contained in Paragraph 40 of the Plaintiff's Complaint.

**COUNT SIX**

**Estate of Joseph R. Feliciano vs. SLC Transport, Inc.**  
**M.G.L. c. 229, §2(2) and §2(5)(3): Wrongful Death - Punitive Damages**

41. The Defendants repeat, reallege and incorporate herein by reference their answers contained in Paragraph 1 through 40.
42. No response is necessary to Paragraph 42 of Plaintiff's Complaint as no allegation is contained therein.
43. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 43 of the Plaintiff's Complaint.
44. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 44 of the Plaintiff's Complaint.

45. The Defendants deny the allegations contained in Paragraph 45 of the Plaintiff's Complaint.
46. The Defendants admit the allegations contained in Paragraph 46 of the Plaintiff's Complaint.
47. The Defendants deny the allegations contained in Paragraph 47 of the Plaintiff's Complaint.

**COUNT SEVEN**

**Estate of Joseph R. Feliciano vs. Leroy Holding Company, Inc.**  
**Liability Pursuant to M.G.L. c. 229, §2; M.G.L. c. 231, §85A; and Respondeat Superior**

48. The Defendants repeat, reallege and incorporate herein by reference their answers contained in Paragraph 1 through 40.
49. No response is necessary to Paragraph 49 of Plaintiff's Complaint as no allegation is contained therein.
50. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 50 of the Plaintiff's Complaint.
51. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 51 of the Plaintiff's Complaint.
52. The Defendants admit the allegations contained in Paragraph 52 of the Plaintiff's Complaint.
53. The Defendants deny the allegations contained in Paragraph 53 of the Plaintiff's Complaint.
54. The Defendants deny the allegations contained in Paragraph 54 of the Plaintiff's Complaint.

**COUNT SEVEN**

**Estate of Joseph R. Feliciano vs. Leroy Holding Company, Inc.**  
**Liability For Conscious Suffering Pursuant to M.G.L. c. 229, §2 §6; M.G.L. c. 231, §85A;**  
**and Respondeat Superior**

55. The Defendants repeat, reallege and incorporate herein by reference their answers contained in Paragraph 1 through 54.

56. No response is necessary to Paragraph 56 of Plaintiff's Complaint as no allegation is contained therein.
57. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 57 of the Plaintiff's Complaint.
58. The Defendants deny the allegations contained in Paragraph 58 of the Plaintiff's Complaint.
59. The Defendants admit the allegations contained in Paragraph 59 of the Plaintiff's Complaint.
60. The Defendants deny the allegations contained in Paragraph 60 of the Plaintiff's Complaint.
61. The Defendants deny the allegations contained in Paragraph 61 of the Plaintiff's Complaint.

**COUNT NINE**

**Estate of Joseph R. Feliciano vs. Leroy Holding Company, Inc.**  
**M.G.L. c. 229, §2(2) and §2(5)(3): Wrongful Death - Punitive Damages**

62. The Defendants repeat, reallege and incorporate herein by reference their answers contained in Paragraph 1 through 61.
63. No response is necessary to Paragraph 63 of Plaintiff's Complaint as no allegation is contained therein.
64. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 64 of the Plaintiff's Complaint.
65. The Defendants deny the allegations contained in Paragraph 65 of the Plaintiff's Complaint.
66. The Defendants admit the allegations contained in Paragraph 66 of the Plaintiff's Complaint.
67. The Defendants deny the allegations contained in Paragraph 67 of the Plaintiff's Complaint.
68. The Defendants deny the allegations contained in Paragraph 68 of the Plaintiff's Complaint.

## AFFIRMATIVE DEFENSES

### FIRST DEFENSE

The Complaint fails to state a claim or claims against the Defendants upon which relief can be granted.

### SECOND DEFENSE

The Plaintiff has failed to commence this action within the time allowed or required by law

### THIRD DEFENSE

The Defendant states that the Plaintiff's Complaint should be dismissed due to insufficiency of service of process.

### FOURTH DEFENSE

This Court lacks jurisdiction over the Defendants.

### FIFTH DEFENSE

The contributory negligence of the Plaintiff was greater than the alleged negligence of the Defendants, wherefore, the Plaintiff cannot recover.

### SIXTH DEFENSE

The negligence of the Plaintiff contributed in some degree to the cause of the alleged accident and/or the injuries sustained; wherefore, the damages, if any, awarded to the Plaintiff should be diminished and reduced in accordance with law.

### SEVENTH DEFENSE

If the Plaintiff suffered injuries and damages as alleged in his Complaint, the same were caused by a person or persons who were neither an employee, agent, servant or representative of the defendants and for whose conduct the Defendants are not and was not responsible.

### EIGHTH DEFENSE

The Plaintiff assumed the risk and is therefore barred from making any claim against the Defendants.

NINTH DEFENSE

The Plaintiff is not entitled to maintain this cause of action because neither his special damages nor the nature and extent of his injuries entitle him to maintain a civil action for damages.

TENTH DEFENSE

The Plaintiff has failed to satisfy the requisite filing requirements.

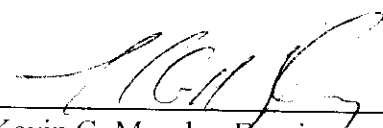
ELEVENTH DEFENSE

The Defendants hereby give notice that it intends to rely upon such other and further defenses as may become available or apparent during the course of discovery, and hereby reserve the right to amend its answer to assert any such defense.

**THE DEFENDANTS DEMAND A TRIAL BY JURY ON ALL ISSUES.**

THE DEFENDANTS,  
KEVIN MILES, LEROY HOLDING  
COMPANY, INC. & SLC TRANSPORT, INC.  
By Their Attorney

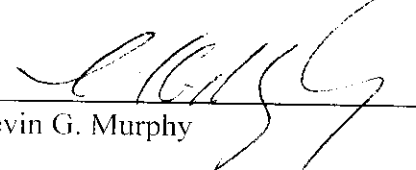
Dated: March 24, 2004

  
Kevin G. Murphy, Esquire  
Pessolano, Dusel, Murphy & Casartello, PC  
115 State Street, Fifth Floor  
Springfield, MA 01103  
(413) 781-4700  
(413) 781-0471 (fax)  
BBO No. 363110

CERTIFICATE OF SERVICE

I, Kevin G. Murphy, Esquire, hereby certify that on this date, I caused the foregoing document to be served upon the other party (ies) in this action by mailing a copy of same, first class mail, postage prepaid to: Samuel M. Radner, Esq., 999 Asylum Avenue, Hartford, CT 06105.

Dated: March 24, 2004

  
Kevin G. Murphy